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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

September 20, 2017



Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Angel Montion
J.S.I.D. File #16-0155
L.A.S.D. File #016-04651-0287-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 30, 2016, fatal shooting of Angel Montion by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

By

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Ervin Francois, #[redacted]

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MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Angel Montion
J.S.I.D. File #16-0155
L.A.S.D. File #016-04651-0287-013

DATE: September 20, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 30, 2016, fatal shooting of Angel Montion by Los Angeles County Sheriff (LASD) Deputy Ervin Francois. It is our conclusion that Deputy Francois acted in lawful defense of others.

The District Attorney's Command Center was notified of the shooting on March 30, 2016, at approximately 4:43 p.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports submitted to this office by LASD Homicide Bureau Detectives Marc Boskovich and Louie Aguilera. Deputy Francois provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

Detectives from LASD Major Crimes Bureau (MCB) identified Angel Montion as the suspect in a forcible kidnapping and assault with a firearm investigation that occurred on March 19, 2016. On March 29, 2016, the Los Angeles County District Attorney's Office filed a felony case for warrant, charging Montion with attempted murder, kidnapping, assault with a firearm and robbery.[1] Montion was on active parole for assault with a firearm.

[1] Case Number BA445284.

On March 30, 2016, detectives from MCB's Surveillance Apprehension Team, conducted surveillance at Montion's last known residence in the City of Montebello. At approximately 10:00 a.m., detectives observed Montion leave the location on foot. The surveillance team followed Montion in undercover vehicles as Montion attempted to elude them. Deputies lost sight of Montion as he walked eastbound on the south sidewalk of Northside Drive, in an unincorporated area of Los Angeles County. The MCB surveillance team, a K9 Unit and deputies from the East Los Angeles Sheriff's Station established a perimeter around the area. LASD Special Enforcement Bureau (SEB) was called to the scene.

At approximately 10:35 a.m., [redacted] approached deputies on the containment and advised them that Montion had broken into her residence, a converted garage to the rear of [redacted] Northside Drive. [redacted] was interviewed by SEB Sergeant Russell Boucher at the scene. [redacted] advised Boucher that Montion told her the police were outside and that it was "not going to end good." Montion told [redacted] to leave, but she was reluctant to leave him alone in her house. [redacted] spoke with Montion's [redacted] over the phone. The [redacted] encouraged [redacted] to leave stating that there was going to be a shooting. [redacted] gathered her [redacted] and left the house. [redacted] was shown a photograph of Montion and she positively identified him as the person who invaded her home.

As SEB deputies arrived to the location, they took positions around the converted garage.[2] Deputies were staged to the rear of the garage as well as in the yards to the east and west of the property. Deputies were also positioned in rooms that faced the garage within the main residence. An armored rescue vehicle (ARV) was parked on the driveway apron with an arrest team positioned behind it. Multiple announcements were made over the ARV's public address system asking Montion to surrender.

At approximately 12:50 p.m., Montion called the East Los Angeles Sheriff's Station. Montion stated that he wanted to surrender, however, he needed additional time to think. Montion disconnected the call as he was being instructed on how to surrender.

At approximately 1:00 p.m., SEB Deputy Richard Diliberti contacted Montion verbally through a rear door of the main residence. Montion opened the garage's inner front door and spoke to Diliberti through the closed metal security gate. Diliberti asked Montion to come outside and surrender. Montion replied that he wanted to have a few more drinks, get his mind right, make a few phone calls and then he would surrender.[3] Montion closed the inner door. Diliberti coaxed Montion to open the inner door a second time. A similar exchange occurred between Diliberti and Montion before Montion closed the door.

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[2] The detached garage sits directly behind the main residence. A driveway runs along the east (left) side of the main house leading to the rear yard and garage.

[3] [redacted] stated that Montion was drinking beer from her refrigerator when she first encountered him.

For nearly two hours, SEB deputies, members of the LASD Crisis Negotiations Team and public address announcements from the ARV attempted to contact Montion without success. A flash grenade was deployed outside the detached garage in an attempt to startle Montion and convince him to surrender or to reinitiate contact. It had no effect.

At 2:42 p.m., SEB Deputy Nic Adragna arrived to the location with a Tac Cat. The Tac Cat is a heavily armed tractor operated by a deputy driver. The Tac Cat has an elevating boom with an attachment that acts as a claw device and CS tear gas deployment option. Adragna maneuvered the Tac Cat down the driveway and positioned it between the front residence and the converted garage. Adragna made numerous public address announcements from the Tac Cat instructing Montion to surrender peacefully. Montion did not acknowledge the announcements.

At 2:48 p.m., Adragna removed the outer security screen door from the converted garage with the Tac Cat's claw and forced open the interior front door. Adragna pushed away furniture that had been placed in front of the door preventing entrance into the residence. At 3:04 p.m., SEB deputies deployed non-pyrotechnic tear gas into the location. The gas was ineffective. At 3:28 p.m., pyrotechnic tear gas was deployed into the detached garage.[4]

Statement of SEB Deputy Ervin Francois

Francois was advised that Montion was a suspect in a kidnapping and an assault with a firearm. He was also advised that Montion had fled into an occupied residence while being followed by the MCD surveillance team. Montion barricaded himself inside the home once the residents fled.

Francois positioned himself in the west bedroom to the rear of the main house. Francois had a clear view of the detached garage's front door which was approximately 15 yards from the bedroom window. Francois was armed with a Heckler & Koch, MP5, 9mm submachine gun.

Francois was able to see into the front room of the converted garage once the Tac Cat removed the front door and security gate. Montion was not visible at the time. Diliberti was next to Francois at the bedroom window when the pyrotechnic tear gas was injected into the garage. The two deputies decided that Francois would provide lethal coverage while Diliberti broadcast Montion's movements over the radio.

Approximately ten minutes after the tear gas was deployed, Francois saw Montion walk toward the front door. Montion was using his left hand to hold a towel over his face and appeared to be holding something in his right hand by his side. Francois realized it was a black handgun when Montion exited the front door. At the same time, Montion was looking from left to right and shifting from side to side as if attempting to locate the deputies' positions.

Montion ignored multiple commands to drop the weapon. Instead, he walked to his right (east) toward the driveway. Montion was heading toward containment deputies on the other side of the east wall, as well as the arrest team staged at the mouth of the driveway. Montion was not visible to these deputies. Montion refused to drop the weapon and continued to look around as if

[4] Pyrotechnic tear gas has stronger side effects than non-pyrotechnic tear gas and is typically more effective in flushing a person from a building.

attempting to acquire a target. When Montion moved away from the front door while still holding the gun, and appeared to look for a target, Francois feared that Montion would ambush the deputies on the other side of the wall or at the end of the driveway. Francois fired four rounds at Montion when he was three feet from the front door. Montion dropped the gun and fell to the ground.

Statement of SEB Deputy Richard Diliberti

Montion had a bandana across his face and his right arm was behind his back when he first came to the front door. Montion was looking around in an attempt to locate the deputies. Montion stepped out of the garage and Diliberti observed a large handgun in his right hand. Diliberti broadcast over the radio that Montion was armed with a gun. Montion walked two to three feet from the front door and headed toward the driveway leading to the arrest team staged behind the ARV. At that time, Francois fired four rounds, striking Montion.

Statement of SEB Sergeant Russell Boucher

At the time of the deputy involved shooting, Boucher was standing with SEB Deputy Hilgendorf in the east bedroom at the rear of the main house. Boucher observed Montion move toward the front door shortly after the pyrotechnic tear gas was introduced into the garage. Montion motioned for the Tac Cat to move away from the front door. Adragna reversed the Tac Cat from the door. Montion had a bandana around his face and his right hand was tucked behind his back. Montion poked his head out and looked to his left and right, as if trying to find an escape path. Montion stepped outside the detached garage and moved his right hand from behind his back, revealing a handgun. It appeared to Boucher that Montion intended to take a shot at any deputy he encountered. Montion moved east toward a number of SEB deputies positioned at the end of the driveway. As he walked toward the driveway, the deputy involved shooting occurred.

Statement of SEB Deputy Kevin Hilgendorf

Hilgendorf observed Montion at the doorway holding an unknown object in his hand. Initially, Hilgendorf thought Montion wanted to surrender so he advised Adragna to reverse the Tac Cat from the front door. At that time, Hilgendorf observed a handgun in Montion's hand and realized that he was not surrendering. Montion looked around the rear yard in an attempt to locate the deputies' positions. Montion turned toward the driveway and Hilgendorf heard four gunshots and Montion immediately fell to the ground.

Statement of SEB Deputy Nic Adragna

Adragna heard over the radio that Montion was at the front door. Adragna reversed the Tac Cat three to four feet from the front door. Adragna saw Montion when he was standing in the threshold with a handkerchief covering his mouth. Montion appeared to be holding an object in his right hand. Montion stepped out of the doorway and Adragna observed a black semiautomatic handgun in his right hand. Montion looked around at his surroundings as if trying to acquire a target. Motion then walked east toward the deputies in the yard next door. At that time, Adragna heard four gunshots and Montion fell onto his stomach.

Statement of SEB Deputy [redacted]

[redacted] took a position in the laundry room at the rear of the main residence. When Diliberti broadcast that Montion was moving toward the front door, [redacted] was unable to see him from his position. [redacted] eventually observed Montion exit the garage with a rag or towel wrapped around his face. Montion was holding his right hand away from his body and behind the door jamb. Montion looked to his left and right and tried to peer inside the windows to the front house. [redacted] heard, "He's got a gun" over the radio at the same time that Montion moved his right hand revealing a gun. Montion moved east toward the driveway with the gun pointed in that direction. [redacted] heard three to four gunshots and Montion fell onto his stomach.

Additional Information

The arrest team approached Montion and took him into custody. Paramedics with LASD Emergency Services Detail treated Montion at the scene. Montion was transported to USC Medical Center by personnel from the Los Angeles County Fire Department. Montion was pronounced deceased at 4:37 p.m. A subsequent autopsy ascribed his death to multiple gunshot wounds.

A .40 caliber semiautomatic firearm was located next to Montion. The weapon had one live round in the chamber and eight live rounds in the magazine.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

CONCLUSION

The evidence examined shows that Angel Montion was wanted for attempted murder, kidnapping, assault with a firearm and robbery. When deputies encountered him on March 30, 2016, he was armed with a loaded semiautomatic firearm. It is clear from the evidence that Montion was desperate to avoid arrest. Montion eluded the MCD surveillance team by breaking into a residence occupied by a [redacted] and [redacted] Montion then barricaded himself inside the home for over five hours rather than surrendering.

Montion was forced out of the residence by the use of tear gas and did not exit voluntarily. Montion was aware that he was surrounded by law enforcement and chose to exit the garage armed with a loaded firearm. Montion ignored multiple commands to drop the weapon. Instead, he headed in the direction of deputies hidden behind the wall in a neighboring yard and behind the ARV in the driveway. Montion repeatedly looked around in an attempt to locate the deputies as he headed toward the driveway. In light of the fact that Montion emerged from the residence with a loaded firearm only after the front door had been ripped off and tear gas administered

twice, it was reasonable to conclude that Montion was not surrendering peacefully and posed a danger to any deputy he encountered. Montion's actions placed Francois in reasonable fear for the lives of every deputy that Montion came across in his attempt to escape and Francois responded with reasonable deadly force.

We conclude that Deputy Ervin Francois acted in lawful defense of others when he used deadly force against Angel Montion. We are therefore closing our file and will take no further action in this manner.